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In the Supreme Court of the United States

OCTOBER TERM, 1990

CARMEN ANA CULPEPER, ET AL.,
PETITIONERS,

v.

ROBERT SCHNEIDER, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Certiorari should be issued in this case because:

A. The erroneous application of the *Rooker-Feldman* doctrine and of claim and issue preclusion by the court below, allows the federal district court to sit in review of a decision rendered by the Supreme Court of the Commonwealth of Puerto Rico, contrary to well settled precedents of this Court.

B. The U.S. Court of Appeal's Decision violates fundamental principles of comity and federalism, diminishing the authority and dignity of the Supreme Court of the Commonwealth of Puerto Rico.

C. In exercising jurisdiction in this case the United States District Court for the District of Puerto Rico usurped powers vested upon this Supreme Court by Congress.

LIST OF PARTIES

The parties to the proceedings below were petitioners, the Secretaries of Justice and of the Treasury of the Commonwealth of Puerto Rico and respondents, Robert Schneider, Hector Ramos, Oreste Ramos, Jorge Romany and Jorge Sous, and the Colegio de Abogados de Puerto Rico. The Colegio de Abogados has filed a separate petition of certiorari before this Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, the Secretaries of Justice and of the Treasury of Commonwealth of Puerto Rico, hereby respectfully petition that a writ of certiorari issue to review the judgment and opinion of the United States to the Court of Appeals for the First Circuit, so entered in the above entitled proceeding on October 24, 1990.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit of October 24, 1990 is reported at 917 F.2d 620 (1st Cir. 1990). Appendix A. The December 20, 1990 Order,

denying the petition for rehearing and the suggestion for a rehearing *en banc*, is attached as Appendix B.

The Opinion of the United States District Court for the District of Puerto Rico is reported at 682 F.Supp. 674 (D.P.R. 1988). Appendix C.

JURISDICTION OF THIS COURT

The judgment of the court of appeals was entered on October 24, 1990. A petition for rehearing and suggestion that the case be reheard *en banc* was subsequently filed. On December 20, 1990 the petition and suggestion were denied. Upon an application for an extension of time within which to file a petition for writ of certiorari, Mr. Justice Souter, on March 14, 1991, signed an order extending the time to and including April 3, 1991. This petition for a writ of certiorari is being filed pursuant to 28 U.S.C. §1254 (1).

PROVISION OF LAW INVOLVED

This case involves the application of 28 U.S.C. §1258:

> Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

This petition for writ of certiorari poses an important question for the Commonwealth of Puerto Rico in that the court of

appeals, in erroneously applying the doctrine set forth by this Court in *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923) *("Rooker")* and *District Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983) *("Feldman")* as well as that of claim and issue preclusion — as did the district court before — is in effect reviewing a final decision rendered by the Supreme Court of the Commonwealth of Puerto Rico that may only be had by this Court. *See*, 28 U.S.C. §1258. This diminishes the authority of the Commonwealth Supreme Court and openly contradicts well settled precedents of this Court. It is the responsibility of this Court to safeguard state jurisdictional sovereignty against impermissible encroachment by lower federal courts. This Court is not only "supreme" over all other courts but, more importantly, it alone has been granted exclusive jurisdiction to review state judgments as well as those of the Commonwealth of Puerto Rico. Certiorari is clearly warranted to correct the decision below and vindicate the sovereignty of the Supreme Court of the Commonwealth of Puerto Rico and to uphold the congressional mandate contained in 28 U.S.C. §1258.

This dispute concerning Puerto Rico's integrated bar has had a long history, it has been the subject of two opinions by the Commonwealth Supreme Court,[1] three opinions by the Court of Appeals of the First Circuit,[2] and four opinions and orders by the United States District Court for the District of Puerto Rico.[3] It originated on November 27, 1977, when

[1] *See*, *Colegio de Abogados de Puerto Rico* v. *Schneider*, 112 P.R. Dec. 540 (1982) *("Colegio de Abogados I")*; *Colegio de Abogados de Puerto Rico* v. *Schneider*, 117 P.R. Dec. 540 (1986). *("Colegio de Abogados II")*. A copy of an official translation of each of these two opinions is attached as Appendix E and F respectively.

[2] *See*, *In re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17 (1st Cir. 1982); *Romany* v. *Colegio de Abogados*, 742 F.2d 32 (1st Cir. 1984); *Schneider* v. *Colegio de Abogados*, 917 F.2d 620 (1st Cir. 1990).

[3] *See*, *Schneider* v. *Colegio de Abogados de Puerto Rico*, 546 F.Supp. 1251 (D.P.R. 1982); Schneider v. *Colegio de Abogados de Puerto Rico*, 565 F.Supp. 963 (D.P.R. 1983); *Schneider* v. *Colegio de Abogados de Puerto Rico*, 670 F.Supp. 1098 (D.P.R. 1987); *Schneider* v. *Colegio de Abogados de Puerto Rico*, 682 F.Supp. 674 (D.P.R. 1988).

Puerto Rico's bar association known as the Colegio de Abogados de Puerto Rico ("Colegio"), filed an action before the Commonwealth Supreme Court to compel 99 attorneys, including the five respondents herein, to pay their dues. After the appropriate proceedings, all attorneys paid their dues, except Robert E. Schneider and Hector R. Ramos, two of the respondents. They averred that the law compelling membership, as well as that requiring payment of the forensic and notarial stamps, were unconstitutional under both the United States and the Commonwealth Constitutions.[4]

The Supreme Court of the Puerto Rico, in an opinion written by then Chief Justice Trias Monge, comprehensively addressed the issues raised by Schneider's and Ramos' objections, and unanimously rejected them. *Colegio de Abogados de Puerto Rico* v. *Schneider*, 112 P.R. Dec. 540 (1982). *("Colegio de Abogados I").* 12 Official Translations of the Opinions of the Supreme Court of Puerto Rico 676. (Appendix D). Citing *Lathrop* v. *Donahue*, 367 U.S. 820 (1961), the court upheld the constitutionality of compulsory bar membership and publicly compelled financial support through payment of dues and cancellation of stamps. However citing *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209 (1977), the court also held that attorneys had a right "to raise objection to the use of their contributions or of part thereof for ideological activities they do [sic] disapproved." *Colegio de Abogados I*, 12 Official Translation at 692.

The Colegio was ordered to draft a Remedy to protect dissenting members' rights according to a set of guidelines established by the Commonwealth Supreme Court that required compliance with U.S. Supreme Court precedents, such as *Abood*. 12 Official Translation at 693-96. The Puerto Rico court retained jurisdiction to deal with the remedy that had to be drawn.

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[4] On July 12, 1978, Schneider and Ramos purported to reserve their federal claims under *England* v. *Louisiana State Bd. of Medical Examiners*, 375 U.S. 422 (1964). *But see, Fuller Co.* v. *Ramon I. Gil, Inc.*, 782 F.2d 306, 311-12 (1st Cir. 1986).

Soon thereafter, on June 9, 1982, Schneider and Ramos filed a civil rights action in federal district court against the Colegio, and the Commonwealth's Secretaries of Justice and the Treasury, challenging, on federal constitutional grounds, compulsory bar membership and publicly compelled financial support to the Colegio.[5] Three other plaintiffs, Jorge F. Romany, Jorge Souss Shidrewa and Oreste V. Ramos Diaz, herein respondents, also filed substantially similar claims, and all four cases were consolidated.

Meanwhile, the Colegio submitted for approval by the Commonwealth Supreme Court the Remedy the Court had ordered it to draft. Before the Puerto Rico court could express itself about the Remedy's validity, the district court issued a judgment declaring the challenged bar statutes unconstitutional "as applied", and enjoining defendants from enforcing them. *Schneider* v. *Colegio de Abogados de Puerto Rico*, 565 F.Supp. 963 (D.P.R. 1983).

In *Romany* v. *Colegio de Abogados de Puerto Rico*, 742 F.2d 32 (1st Cir. 1984) ("Romany") the First Circuit *vacated the judgment* of the district court, and mandated the lower court to abstain, while retaining jurisdiction. The court held that the Supreme Court of Puerto Rico must be allowed an opportunity to conclude the process initiated, but not completed, in its opinion in *Colegio de Abogados I*, review Colegio's proposed Remedy, and accept, reject or modify it.

The proceedings that ensued before the Commonwealth Supreme Court after the court of appeals' mandated abstention, are set forth in *Colegio de Abogados de Puerto Rico* v. *Schneider*, 117 P.R. Dec. 540 (1986) Official Translation of

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[5] Respondents also sued the Justices of the Commonwealth Supreme Court. The court of appeals dismissed the claims against them "insofar as they involve Puerto Rico's system of compulsory bar membership and compulsory payment of bar dues." *In re Justices*, 695 F.2d at 26. Regarding the stamp litigation, the court of appeals considered them "nominal parties". *Id.* In the latest opinion by the court of appeals it recognizes "that the Justices are now appropriate parties in the dues claim because of their promulgation of the 1986 Rule." *Schneider*, 917 F.2d at 629 n.10.

the Supreme Court of Puerto Rico, slip op. at 4-7 (June 26, 1986) ("Colegio de Abogados II). Appendix F. Several of its aspects deserve emphasis. At a prehearing conference held on January 4, 1985, before the Special Master appointed by the Puerto Rico court to receive evidence, respondents Oreste Ramos, Jorge Romany and Jorge Souss, *refused* to participate further in the proceedings.[6] These continued with the full participation of respondents Schneider and Hector Ramos.

Evidentiary hearings were held on January 15 and 22, February 4, 5 and 6, and March 11, 13, and 25, 1985. Colegio presented extensive testimony and documentary evidence that was never controverted by respondents Schneider and Ramos. They presented in evidence the record of the proceeding in the federal court case. Respondents Schneider and Ramos never made any *England* reservation of federal claims or federal forum. *See*, *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964).

On June 26, 1986 the Commonwealth Supreme Court, per Chief Justice Pons Nunez, issued the opinion that concluded the process initiated in *Colegio de Abogados I*, and established the Remedy called for in that opinion. *See Colegio de Abogados II*. The Puerto Rico court made extensive findings of fact to complement the findings made in its previous decision, as well as in the district court opinion in *Schneider*, 565 F.Supp. 963.

The Puerto Rico court then fashioned the Remedy providing dissenting bar members with an effective instrument to protect their rights. The court devised the Remedy in light of the Commonwealth Constitution and the standards set forth by the several U.S. Supreme Court precedents the court deemed

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[6] The Commonwealth Supreme Court stated that in the motion filed on their behalf they requested "to be relieved from further participation in the case", *Colegio de Abogados II*, slip. op. at 5. The court below rejects this characterization by stating that "we fail to see how they were parties in the first place"; *Schneider*, 917 F.2d at 15 n.11); forgetting, that it was the court itself who in *Romany* ordered respondents to return to the state forum to litigate their claims.

necessary to follow,[7] as well as the court's inherent power to regulate the legal profession in Puerto Rico. Subsequently, the court rejected Schneider's and Ramos' motion for reconsideration raising objections to the Remedy that reiterated the constitutional arguments they have raised throughout this litigation.

Respondents then sought relief before the district court and reactivated the federal case. The district court reopened the case and held a pretrial conference on June 17, 1987. On June 26, 1987, Colegio moved for dismissal on jurisdictional grounds, the district court erroneously denied the motion. *See*, *Schneider* v. *Colegio de Abogados de Puerto Rico*, 670 F.Supp. 1098 (D.P.R. 1987).

Subsequently, the district court held an evidentiary hearing, received post trial memoranda, and issued its judgment. *Schneider* v. *Colegio de Abogados*, 682 F.Supp. 674 (D.P.R. 1988). The district court held that compelled membership in bar association violated dissenters' nonassociational rights because the Remedy designed and implemented by the Puerto Rico Supreme Court, to safeguard their rights, was inadequate. The district court also invalidated statutes requiring that lawyers affix official stamps, sold by the Colegio, to all court documents. *See*, P.R. Laws Ann. tit. 4 §§785, 1006, 1038 (1980).

On October 24, 1990 the court of appeals affirmed in part, reversed in part, modified the judgment of the district court and remanded the case for further proceedings consistent with the opinion. *Schneider* v. *Colegio de Abogados*, 917 F.2d 620 (1st Cir. 1990). The court below erroneously concluded that in designing the Remedy the Commonwealth Supreme Court "invoked its inherent powers over the bar to go beyond their individual complaints to accomplish much needed bar reform."

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[7] The court based itself on *Machinist* v. *Street*, 357 U.S. 740 (1961); *Lathrop* v. *Donahue*, 367 U.S. 820 (1961); *Railway Clerks* v. *Allen*, 373 U.S. 113 (1963); *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209 (1977); *Ellis* v. *Railway Clerks*, 466 U.S. 1883 (1984); *Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986).

Schneider, 917 F.2d at 629. Thus, the fashioning of the 1986 Remedy was in effect and act of rulemaking rather than an adjudication of a case, therefore, the *Rooker-Feldman* doctrine was inapplicable to this case. There was no jurisdictional barrier to the exercise of federal judicial power by the district court. Additionnally, the court below concluded that since only two of respondets were parties in the state court proceedings, even if jurisdiction was improper as to them, "the case would continue on behalf of the remaining plaintiffs." *Id.*

The court below also rejected petitioners' invocation of the doctrine of claim and issue preclusion by stating that the district court first rejected those claims in 1982 and that decision was not challenged in the subsequent appeal that was filed thus, it may be held foreclosed on a later appeal. *Compare*, *Schneider*, 546 F.Supp. 1251 with *Romany*, 742 F.2d 32. Accordingly, the court below erroneously chose to treat the district court's 1982 ruling on preclusion, as establishing the law of the case. As with the *Rooker* issue, the court erroneously concluded also that since not all respondents were parties in the state court proceedings, the case could proceed as to those parties. Having thus disposed of the issues of jurisdiction and preclusion the court below felt free to roam through the particular provisions of the Remedy devised by the Supreme Court of the Commonwealth of Puerto Rico. The court found the remedy to be deficient and gave "defendants . . . six months . . . to submit a modified version of its rule, or an alternative, to the district court, during which time 100% of dissenters' dues must be held in escrow." *Schneider*, 917 F.2d at 640.

The unwarranted assumption of jurisdiction by the district court, later condoned by the court of appeals, based upon an erroneous application of pertinent case law of this Court, enlarges the jurisdiction of the lower federal courts at the expense of divesting this Court of its exclusive jurisdiction to review state judgments. Moreover, the actions taken by the courts below substantially diminished the authority of the Puerto Rico Supreme Court, causing unnecessary friction between state and federal courts.

REASONS FOR GRANTING THIS PETITION

A. The Erroneous Application Of The *Rooker-Feldman* Doctrine And Of Claim And Issue Preclusion By The Court Below, Permits The Federal District Court To Sit In Review Of A Decision Rendered By The Supreme Court Of The Commonwealth Of Puerto Rico.

1. *The Rooker-Feldman Issue.*

The complaint filed in federal district court, was an attempt to seek review of the judgment rendered in 1982 by Puerto Rico's Supreme Court in *Colegio de Abogados I* as well as the subsequent Remedy promulgated by that court in *Colegio de Abogados II*, when the process initiated in 1977 came to fruition. The district court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in a judicial proceeding. 28 U.S.C. §§ 1257, 1258 provide, as the proper court in which to obtain such review the United States Supreme Court. *See, Feldman*, 460 U.S. at 482 ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this court."); *Rooker*, 263 U.S. at 416 ("The jurisdiction possessed by the District Court is strictly original."); *Atlantic Coast Line R. Co.* v. *Locomotive Engineers*, 398 U.S. 281, 296 (1970) ("[L]ower federal courts possess no power whatever to sit in direct review of state court decisions."). *See generally*, Chang, *Rediscovering the Rooker Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 Hastings L.J. 1337, 1355 (1980).

In short, an inferior federal court established by Congress pursuant to Art. III, §1, of the Constitution, may not act as an appellate tribunal for the purpose of overruling or modifying a state court judgment, even though the judgment may rest on an erroneous resolution of constitutional or federal law issues. The exclusive procedure for federal review is that specified in 28 U.S.C. §§ 1257, 1258.

The rationale behind this principle is clear and sound. In this nation there are two "essentially separate legal systems." *Atlantic Coast Line R. Co.*, 398 U.S. at 286. "[T]his dual system could not function if state and federal courts were free to fight each other for control of a particular case. Thus, in order to make the dual system work and 'to prevent needless friction between state and federal courts', (citation omitted), it was necessary to work out lines of demarcation between the two systems." *Id.* In this case, those lines were obliterated by the district court when it assumed jurisdiction, and that blatant mistake was perpetuated by the court of appeals' erroneous interpretation of relevant case law.

Throughout the long history of this case it has been petitioners' unflagging position that the holding in *Rooker* and its progeny stand as a jurisdictional barrier to the exercise of jurisdiction by the district court. In *Feldman*, this Court, in reaffirming the validity of the *Rooker* doctrine, distinguished between general constitutional challenges to state bar rules as promulgated by state courts in nonjudicial proceedings — for which there is jurisdiction in the lower federal courts — and challenges to state-court decisions in particular cases arising out of judicial proceedings — for which there is not. 460 U.S. at 486. *See also*, *Pennzoil Co.* v. *Texaco, Inc.*, 481 U.S. 1 (1987) (Marshall, J., concurring in judgment).

Moreover, this Court in *Feldman* indicated that the *Rooker* bar may also apply where the plaintiff fails to raise his federal claims in state court. Stating: "By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state court decision in any federal court." 460 U.S. at 484, n.16.[8]

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[8] In the above mentioned footnote this Court specifically rejected expressions found in *Dasher* v. *Supreme Court*, 658 F.2d 1045 (5th Cir. 1981) that *Rooker* only applied to issues actually raised in state court. See *District of Columbia* v. *Feldman*, 460 U.S. 462, 482-83, n.16 (1982). The *Feldman* court was therefore able to conclude later that "[i]f the constitutional claims presented to a United States district court are *inextricably intertwined* with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, the district court is in essence being called upon to review the state-court decision." *Id.* (Emphasis added).

In this case, the *Rooker-Feldman* doctrine is strictly applicable because this case meets the doctrine's two prong test, to wit: (1) that the proceedings before the P.R. Supreme Court, both in 1982 and 1986, were judicial in nature, and (2) that the constitutional issues raised in federal district court were raised, or could have been raised, in state court and therefore were decided or could have been decided by the P.R. Supreme Court.

(a) *Judicial nature of the proceedings before P.R. Supreme* Court.

In the leading case *Prentis* v. *Atlantic Coast Line Co.*, 211 U.S. 210, 116 (1908) this Court emphasized that the question of whether a court had acted in a judicial capacity turned on the character of the proceeding and the nature of its outcome, rather than upon the character of the body making the decision. "The nature of the final act determines the nature of the previous inquiry . . . So when the final act is legislative the decision which induces it cannot be judicial. . . ." *Id. See also*, *In re Summers*, 325 U.S. 561, 567 (1944).

In *In re Justices*, 695 F.2d at 21 the court of appeals, faced with the task of defining the role of Puerto Rico Supreme Court in these very proceedings unequivocally stated that the P.R. Court was acting in a *judicial manner* and that the "role of the Justices with respect to these statutes[9] is *adjudicative*." *Id.* Furthermore, the court noted that *whenever* the P.R. Supreme Court acts upon a complaint filed before it based on nonpayment of dues "the Justices act as they would in any other case based upon a Commonwealth statute: *they sit as adjudicators, finding facts and determining law in a neutral and impartial judicial fashion.*" *Id.* (Emphasis added). What the court below concluded in reference to *Colegio de Abogados I* also holds true for *Colegio de Abogados II*. In this opinion the P.R. Supreme Court merely brought to an end the process initiated back in 1977, when the original complaint against Schneider and Ramos for nonpayment of dues was

[9] *See*, P.R. Laws Ann. tit. 4 §§ 771-783 (1980).

filed, by providing for an adequate remedy to safeguard their constitutional rights as mandated by *Colegio de Abogados I*. Since this latter opinion is clearly a judicial process, then the result of that process must also be judicial. *Cf. Prentis*, 211 U.S. at 226.

The district court erroneously concluded that *Colegio de Abogados I* ended the adjudicative aspect of the present controversy "so that the 1986 opinion is pure rulemaking." *Schneider*, 670 F.Supp. at 1103. The district court mistakenly sought support for its "bifurcated theory" on *dicta* from *Zimmerman* v. *Grievance Com. of Jud. Dist.*, 726 F.2d 85 (2d Cir. 1983) *cert. denied* 467 U.S. 1227 (1984). In this case the Court of Appeals for the Second Circuit remarked that a state court could combine in one opinion "an adjudication of a grievance complaint with a promulgation of what amounts to a new rule." *Zimmerman*, 726 F.2d at 86. The court of appeals mistakenly agrees with the district court's rationale. *Schneider*, 917 F.2d at 629. The reliance on such *dicta* must be rejected because it is at variance with this Court's admonition that "[t]he nature of the final act determines the nature of the previous inquiry . . ." *Prentis*, 211 U.S. at 226. In *Zimmerman* itself, the court acknowledged that "[i]t would be inconsistent with the thrust of *Feldman* to resolve ambiguities in a state court opinion in favor of the 'promulgation' of a 'new' rule and thereby encounter a jurisdictional issue in the absence of a clear statement from the state court." 726 F.2d at 87. Any ambiguity with respect to the nature and character of the actions undertaken by the P.R. Supreme Court in *Colegio de Abogados II* should have been resolved in a way that would minimize friction between the two judicial systems rather than in a way that promotes it, as did the court below.

Moreover, the court of appeals and the district court failed to recognize that when the challenges presented to a United States District Court are "inextricably intertwined" with the state court judicial proceedings, as in the case at bar, "the district court is in essence being called upon to review the state

court decision." *Feldman*, 460 U.S. at 483-84 n.16. Although this determination is at times difficult to make, "it is apparent, as a first step, that the federal claim is inextricably intertwined with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co.*, 481 U.S. at 25 (Marshall J., concurring in judgment).

Both *Colegio de Abogados*' decisions are part and parcel of the same adjudicative process. In 1982, the Supreme Court of Puerto Rico found that compulsory bar membership was constitutionally valid and that the Colegio enjoys ample freedom of speech. Concomitantly, the P.R. Supreme Court upheld Schneider and Ramos' right to dissent from the ideological pronouncements of the Colegio and therefore to object to the use of their contributions, or of part thereof, for those activities. The court then acknowledged the need to, "formulate the adequate remedy within the circumstances involved to enforce said right." *Colegio de Abogados I*, 12 Official Translation at 692. The nature and scope of the constitutional infringement required the creation of a very particular remedy, a remedy tailored to the constitutional violation incurred. *Cf. Hills* v. *Gautreaux*, 425 U.S. 284, 294 (1976). The creation of such a Remedy reifies Schneider and Ramos constitutional rights, for it will be that Remedy which "constitutes the actualization of the right." Fiss, *The Forms of Justice*, 93 Harv. L. Rev. 1, 52 (1979).

Colegio de Abogados II is but the effectuation of the Remedy propounded by the Puerto Rico court in its 1982 decision. The 1986 decision was rendered following the appointment of a special master and an evidentiary hearing in which Schneider and Ramos actively participated. Briefs were submitted by the parties before the court and Schneider and Ramos even filed a motion for reconsideration once the decision was announced. The Remedy issued grants Schneider and Ramos — *specifically* — the right to request a *refund* for any non-germane expenditures by the Colegio, thus providing relief for past wrongs.

The process just described is akin in nature to the procedures followed by federal courts in what Judge Coffin has called the "new model lawsuits", where the nature of the litigation is such that the remedial stage requires of the trier of fact to assume an activist role in order to achieve the proposed goal. *See*, Coffin, *The Frontier of Remedies: A call for exploration*, 67 Cal. L. Rev. 983 (1979). In this type of litigation, more often than not, the objective sought in the lawsuit is achieved through the issuance of a "structural injunction". Which remedy in turn, "involves a long, continuous relationship between the judge and the institution; it is concerned not with the enforcement of a remedy already given, but *with the giving or shaping of the remedy itself.*" Fiss, *op. cit.* at 27 (emphasis added). Thus the judge's functions in these types of cases "is very close to legislative decision making." Coffin, *op. cit.* at 985. *See generally*, O. Fiss & D. Rendleman, *Injunctions* (2d ed. 1984); Eisenberg & Yeazell, *The Ordinary and Extraordinary in Institutional Litigation*, 93 Harv. L. Rev. 465 (1980). That fact, however, does not detract from the judicial nature of the inquiry.

So understood, it is evident that in issuing its decision in 1986 the Puerto Rico Supreme Court was acting in a judicial role and therefore the first prong of the *Rooker-Feldman* doctrine is met.

(b.) *The federal constitutional issues were decided by the Commonwealth Supreme Court.*

The second prong of *Rooker-Feldman* requires a determination that the federal constitutional issues raised in federal district court by plaintiffs were adjudicated by the state court. We submit that they were so decided.

The language used by the Supreme Court of Puerto Rico in *Colegio de Abogados II* is indicative of the fact that it was construing the rights of the parties in light of, not only of the Constitution of the Commonwealth, *but also*, within the general guidelines set forth by the Supreme Court of the United States.

Colegio de Abogados II, Official Translation slip op. at 17-18. The Supreme Court of Puerto Rico analyzed, and resolved, the issues of respondent's personal rights from the perspective of *both* the state and federal constitution. This dual constitutional analysis evidences that the federal issues were not avoided by the P.R. Supreme Court. Moreover, it also indicates that *at the very least*, the court "felt compelled by what it understood to be federal constitutional considerations to construe 'its own law in the manner it did . . .'." *Delaware* v. *Prouse*, 440 U.S. 648, 653 (1979), *quoting Zacchini* v. *Scripps Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977). *See also*, *Michigan* v. *Long*, 463 U.S. 1032 (1983); *Caldwell* v. *Mississippi*, 427 U.S. 320, 327 (1985).

Therefore, respondents Schneider and Ramos, who fully participated in *Colegio de Abogados II*, and the other respondents who refused to participate, cannot seriously argue that in fashioning the Remedy they questioned, the court did not consider their federal constitutional rights, nor can they deny that their only recourse was to seek review before this Court.

2. *The District Court and the Court of Appeals Erroneously Applied the Doctrine of Claim and Issue Preclusion in this Case.*

The district court and the court of appeals erroneously concluded that *Colegio de Abogados II* did not constitute res judicata because the proceedings therein were rulemaking, not judicial ones, rendering inapplicable 28 U.S.C. §1738. The district court also held that two of the three identities required under the law of Puerto Rico for res judicata to apply, were absent in this case. *See*, *Schneider*, 682 F.Supp. at 1103-06.[10]

This determination misperceives the import of the fact that in spite of the abstention ordered by the court of appeals in *Romany*, in their appearance before the Supreme Court of

[10] This decision was issued in response to Colegio's motion to dismiss on jurisdictional and res judicata grounds.

Puerto Rico, in the judicial proceeding followed to adjudicate the proper remedy they were entitled to, respondents failed to make a reservation of federal rights as required by *England* v. *Louisiana State Board of Medical Examiners*, *supra*.[11] In *England*, this Court created the right to reserve the federal forum as an accommodation between the duty of federal courts to accept jurisdiction of federal cases, and the policy of abstention. *See*, *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75, 83-85 & n.7 (1984); *Allen* v. *McCurry*, 499 U.S. 90, 101 n.17 (1980); *Cuesnogle* v. *Ramos*, 835 F.2d 1486, 1494 (1st Cir. 1987); *accord*, *Fuller Co.* v. *Ramon I. Gil, Inc.*, 782 F.2d 306, 312 (1st Cir. 1986).

To this end, this Court established what it considers a bright and clear line: A litigant shunted by abstention to state court must inform that court what his federal claims are "for the purpose of complying with *Windsor*, and that he intends, should the state courts hold against him on the question of state law, to return to the District Court for disposition of his federal contentions." *England*, 375 U.S. at 421.[12] Moreover, the Court "explicitly" held that if a party freely and without reservation submits his federal claims for decision by the state courts, "he had elected to forego his right to return to the District Court." *Id.*, at 419. *See also*, *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 427-28 (1963).

In this case none of the respondents complied with either *England* or *Windsor*. The record before the Commonwealth Supreme Court is bereft of any evidence that even suggests

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[11] Although the district court failed to make any determination regarding the lack of *England* reservation, *see*, 670 F.Supp. at 1101, n.1, the record before the Puerto Rico court clearly shows a total absence of any attempt at making such reservation after the court of appeals mandated abstention. Moreover, the decision below appears to accept this fact, *see*, 670 F.Supp. at 1104, n.4, but misunderstands its significance.

[12] In *England*, this Court clarified its decision in *Government & Civil Employees Organizing Committee* v. *Windsor*, 353 U.S. 364 (1957), interpreting it as requiring that a litigant "must inform [state] courts what his federal claims are," not that he need litigate them there. *England*, 375 U.S. at 420.

that respondents Schneider or Ramos, either informed the court of their federal claims, or much less made the required reservation of their right to return to federal court. Indeed, these respondents submitted to the court as evidence in their favor, the record of the case before the federal court, and such record was received in evidence and considered by the Puerto Rico court upon making its decision. *Colegio de Abogados II*, Official Translation at 6-7.

As to the other respondents in the instant case, their failure to comply with *England* and *Windsor* is much worse. After the court of appeals' mandated abstention in *Romany*, they simply refused to participate in the judicial proceedings before the Commonwealth Supreme Court. *See Colegio de Abogados II*, Official Translation slip op. at 5. In sum, these other respondents simply waived their rights, and implicitly agreed to have the court determine the proper remedy as to them on the basis of plaintiffs Schneider and Ramos' presentation of the facts and the legal issues.

All respondents, freely and without reservation, submitted their federal claims for decision by the Commonwealth Supreme Court, electing, in fact, to forego their right to return to the district court. *England*, 375 U.S. at 419. *Colegio de Abogados II* precludes their relitigating the issues of fact and the federal claims decided by the court, as well as those they failed to submit. *See*, *Migra*, 465 U.S. at 75; *Allen* v. *McCurry*, 449 U.S. 90 (1980); *Feldman*, 460 U.S. at 484 n.16. *See also*, *Casagrande* v. *Agoritsas*, 748 F.2d 47, 49 (1st Cir. 1984).

The district court rejection of this argument on the basis of the law of the case doctrine is erroneous. The *Schneider 1982 Decision* that purports to be "the law of the case" was vacated by the court of appeals in *Romany*. "The law of the case [doctrine] *does not* apply to a finding that is later vacated." *Dorsey* v. *Continental Cas. Co.*, 730 F.2d 675, 678 (11th Cir. 1982); *Johnson* v. *Board of Education*, 457 U.S. 52 (1982). The findings that are an integral part of the vacated judgment "are like-wise vacated and are thus not subject to the law of the

case doctrine." *Dorsey*, *id.* Moreover, the *Rooker* issue is jurisdictional, and may be raised at any time. *City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973).

In a §1983 action, it is now well "settled that a federal court must give a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra*, 465 U.S. at 81; *Allen* v. *McCurry*, 449 U.S. at 97-101, 104-05. *See also*, *Kremer* v. *Chemical Construction Corp.*, 456 U.S. 461, 466 (1982); *University of Tennessee* v. *Elliott*, 478 U.S. 788, (1986). In Puerto Rico, pursuant to the Civil Code, (Appendix D), res judicata generally binds parties from litigating or relitigating any issue that was or could have been litigated in a prior adjudication and prevents claim splitting. *Pagan Hernandez* v. *U.P.R.*, 107 P.R. Dec. 720, 732-33 (1978), 7 Official Translations at 795 (Appendix G); *A & P General Contractors, Inc.* v. *Asociacion Cana, Inc.*, 110 P.R. Dec. 753, 762-67 (1981), 10 Official Translations at 984 (Appendix H); *Capo Sanchez* v. *Secretary of the Treasury*, 92 P.R.R. 817, 819 (1965). *See also*, *Migra*, 465 U.S. at 83-85; *Marrese* v. *American Academy of Orthopedic Surgeons*, 470 U.S. 373, 375 n.1 (1985).

Recognition of the application of that principle to the determination made by the state adjudicator of the issues of fact is particularly significant in the instant case, for here, the district court refused to accept as proven the facts found by the Supreme Court of Puerto Rico in *Colegio de Abogados II. Schneider*, 682 F.Supp. at 678. Yet, this Supreme Court has clearly held that "'a *fact*, *question* or *right* distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the law'." *Montana* v. *United States*, 440 U.S. 147, 162 (1979), *quoting with approval from United States* v. *Moser*, 266 U.S. 236, 242 (1924) (emphasis by the Court). Indeed, having federal courts give preclusive effect to the factfinding of even state adminis-

trative tribunals "also serves the value of federalism." *Elliott*, 478 U.S. at 788; *Kremer*, 456 U.S. at 479.

The requirements of res judicata were satisfied in this case. First, as more amply discussed above, *Colegio de Abogados II* was a judicial, not a rule making proceeding, that led to the adjudication of plaintiffs rights against the Colegio and the other respondents. The Remedy was issued as an integral part and continuation of the judicial proceedings that began in 1977, continued in 1982 in *Colegio de Abogados I* and were completed in *Colegio de Abogados II*, after the court of appeals' mandated abstention. As the Commonwealth court itself understood, such proceedings were aimed, in the first place, at providing plaintiffs with a judicial Remedy to protect their First Amendment rights. The Remedy provides relief for the wrongs that plaintiffs may have suffered in the past as a consequence of having to subsidize the Colegio's objectionable activities. *See* § E. of the Remedy, *Colegio de Abogados II*, Official Translation at 23-24. As a subsequent aim, and given the effort invested in the case, the Remedy was extended to other dissenters. Both respondents Schneider and Ramos participated fully in the judicial proceedings in state court, and comported themselves as participants in an adversary adjudicative process.[13]

Second, the "things" and "causes" are quite similar in the two actions. The requirements of perfect identity of "things" has been defined as "the object or matter over which the action is exercised." *Lausell Marxuach* v. *Diaz de Yanez*, 103 P.R. Dec. 533, 535 (1975), 3 Official Translations 742, 745 (Appendix I); *Mercado-Riera* v. *Mercado-Riera*, 100 P.R.R. 939, 948 (1972) ("thing" refers to "subject matter" of action). *See also*, *Futura Development Corp.* v. *Centex Corp.*, 761 F.2d 33, 44 (1st Cir. 1985). The Commonwealth Supreme

[13] The other respondents in this case elected not to participate or in any way collaborate with the court in obtaining a Remedy for themselves, implicitly relying on Schneider and Ramos to present their case. Cf. *Restatement (Second) of Judgments* § 40 (1982).

Court has held that there exists an identity of "things" or "object" whenever the court in the second action is necessarily placed at risk of contradicting the previous decision. *A & P General Contractors, Inc.* v. *Asociacion Cana, Inc.*, 110 P.R. Dec. at 765, 10 Official Translations at 998.

Similarly, in *Lausell Marxuach*, the Puerto Rico Supreme Court defined "cause" as "the principal ground, the origin of the actions or exceptions raised and decided, and it must not be mistaken for the means of proof not for the legal grounds of the claims adduced by the parties." 103 P.R. Dec. 533, 3 Official Translations at 745; *Mercado-Riera*, 100 P.R.R. at 950 ("cause" refers to the "ground, reason or motive for the claim"). The Commonwealth Supreme Court has indicated that to determine the motive or origin of the action the court should focus on the facts and reasons given by the parties as they affect the issues. *A & P General Contractors, Inc.* v. *Asociacion Cana, Inc.*, 110 P.R. Dec. at 765, 10 Official Translations at 998.[14]

The motive for respondents' claim in both actions is the same, the alleged unconstitutionality of being compelled to subsidize activities which they find to be objectionable. The only nucleus of fact out of which this whole controversy arises are the same in both cases, and they were fully considered by the Commonwealth Supreme Court.

In exercising jurisdiction in this case by failing to apply correctly the principles just described, the lower federal courts have sanctioned an unprecedented intrusion into state court proceedings, opening a yawning breach in the wall of statutes and judicial doctrines erected by Congress and this Court as a barrier to such intrusions. The result is an open incentive to state court litigants to carve particular issues out of cases resolved by the Commonwealth Supreme Court and cart them

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[14] See also *Fernandez* v. *Trias Monge*, 586 F.2d 848, n.11 (1st Cir. 1978) ("this Circuit has substituted a formal notion of the same cause of action with the broader inquiry into whether the federal claim arises out of 'the same nucleus of fact' as the state claim".); *Lovely* v. *Laliberte*, 498 F.2d 1261, 1263 (1st Cir.), *cert. denied*, 419 U.S. 1038 (1974).

to federal district court in search of what they perceive to be a more favorable forum. This prospect is sufficient to merit this Court's plenary attention.

B. The U.S. Court Of Appeals' Decision Violates Fundamental Principles Of Comity And Federalism, Diminishing The Authority And Dignity Of The Supreme Court Of The Commonwealth Of Puerto Rico.

The decision below violates fundamental principles of comity and federalism by sanctioning federal intrusion in an area of historic and sensitive local concern. As this Court has said: "Since the founding of the Republic the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions." *Leis* v. *Flynt*, 439 U.S. 438, 442 (1979). Federal court interference in such matters is not only inappropriate but also unnecessary. The judges of the Supreme Court of the Commonwealth of Puerto Rico like the judges of the state Supreme Courts, are bound to uphold and apply the Constitution and laws of the United States, just as federal judges are. *See e.g.*, *Pueblo* v. *Dolce*, 105 P.R. Dec. 422, 428-29 (1976). This Court has expressly, and repeatedly rejected "the assumption that state judges will not be faithful to their constitutional responsibilities." *Huffman*, 420 U.S. at 64. *Accord*, *Summer* v. *Mata*, 449 U.S. 539 (1981).

As Justice O'Connor has said: "There is no reason to assume that state court judges cannot and will not provide a 'hospitable forum' in litigating federal constitutional questions." O'Connor, *Trends in the Relationship Between the Federal and State Courts From the Perspective of a State Court Judge*, 22 W. & Mary L. Rev. 801, 813 (1981).

Review in this Court was available. What was not available, in a properly balanced federal system, we respectfully submit, was what the court below authorized: review of the Puerto Rico Supreme Court by a federal district court. This

action entails waste of judicial resources and unnecessary friction between state and federal courts.

We are not conjuring up a hypothetical confrontation between the two court systems engendered by the decision below. It is real and tangible. Lawyers in the Commonwealth of Puerto Rico are bound to follow the decisions of the Puerto Rico Supreme Court in all matters, and particularly, in those appertaining to the licensing and policing of the legal profession. Our Supreme Court has advised the legal profession in Puerto Rico that compulsory bar membership and publicly compelled financial support through payment of dues and cancellation of stamp is constitutional. And likewise, that the scheme designed to safeguard dissenting bar members' rights meets relevant constitutional standards. Therefore, lawyers who wish to practice the legal profession in Puerto Rico must pay the appropriate dues. On the other hand, the federal district court has told those same lawyers that they need not pay those dues, because compelled membership in the bar association is unconstitutional in its present form. Both decisions are irreconcilable. Plenary review by this Court is therefore warranted.

C. In Exercising Jurisdiction In This Case The United States District Court For The District Of Puerto Rico Usurped Powers Vested Upon This Supreme Court By Congress.

The practical effect of the district court's — and later the court of appeals' — erroneous application of the *Rooker-Feldman* doctrine and of claim and issue preclusion, is to recapture for the lower federal court the jurisdiction that Congress, in 1961, transferred from the Court of Appeals of the First Circuit to this Supreme Court. *See*, Pub. L. 87-189 §1, Aug. 30, 1961, 75 Stat. 417. When Congress, in recognition of "the change of status of Puerto Rico from that of a territory to that of an associated Commonwealth under the Act of Compact", amended chapter 81 of title 28 of the United States Code[15] and

[15] 28 U.S.C. §1258.

inserted section 1258 to eliminate the right of appeal from the Supreme Court of Puerto Rico to the Court of Appeals for the First Circuit. S. Rep. No. 735, 87th Cong., 1st Sess., *reprinted in* 1961 *U.S. Code Cong. & Adm. News*, 2448, 2449. This aggrandizement of judicial power comes at the expense of divesting this Court of such appellate jurisdiction. The power to do so rests with Congress.

Consistency with federal judicial process requires that this Court have exclusive jurisdiction to review state court judgments. Otherwise, the principles that currently restrict this Court's power over state court judgments: the highest state court requirement,[16] the time limitation on review, and the limitation of review to the state court record,[17] would be totally undermined.

CONCLUSION

For the foregoing reasons, the decision of the U.S. Court of Appeals should be reversed and the complaints filed by respondents dismissed for lack of jurisdiction.

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[16] 28 U.S.C. § 1257.

[17] *See, Foster* v. *Illinois*, 332 U.S. 134, 135-36 (1947).